

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MARIA CUMMINGS, Individually and as Mother and Natural Guardian of D [REDACTED] C [REDACTED], an infant under the age of eighteen years, and MARVA CHAPMAN, as Mother and Natural Guardian of C [REDACTED] D [REDACTED], an infant under the age of eighteen years,

**AMENDED COMPLAINT**

Plaintiffs,

04 CV 2429 (RJD) (RLM)

-against-

**JURY TRIAL DEMANDED**

THE CITY OF NEW YORK, P.O. CORNELIUS O'KEEFE, P.O. ERIK MONACO, P.O. MATTHEW MONKOWSKI, P.O. JOSEPH REDMOND, SGT. AJAY KAPUR, and P.O.s JOHN and JANE DOE #1-10, individually and in their official capacities, (the names John and Jane Doe being fictitious, as the true names are presently unknown),

Defendants.

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Plaintiffs MARIA CUMMINGS, individually and as mother and natural guardian of D [REDACTED] C [REDACTED], and MARVA CHAPMAN, as mother and natural guardian of C [REDACTED] D [REDACTED], by their attorney, ROSE M. WEBER, complaining of the defendants, respectfully allege as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs bring this action for compensatory damages, punitive damages and attorney's fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violations of their civil rights, as said rights are secured by said statutes and the Constitutions of the State of New York and the United States. Plaintiffs also assert supplemental state law tort claims.

### **JURISDICTION**

2. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988, and the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is founded upon 28 U.S.C. §§ 1331, 1343 and 1367.

### **VENUE**

4. Venue is properly laid in the Eastern District of New York under U.S.C. § 1391(b), in that this is the District in which the claim arose.

### **JURY DEMAND**

5. Plaintiffs respectfully demand a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

### **PARTIES**

6. Plaintiff MARIA CUMMINGS is a Black female, a resident alien in the United States, and at all relevant times a resident of the City and State of New York.

7. Plaintiff D [REDACTED] C [REDACTED] is an African-American male, a citizen of the United States, and at all relevant times a resident of the City and State of New York.

8. Plaintiff C [REDACTED] D [REDACTED] is a Black male, a resident alien in the United States, and at all relevant times a resident of the City and State of New York.

9. Defendant, THE CITY OF NEW YORK, was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

10. Defendant, THE CITY OF NEW YORK, maintains the New York City Police Department, a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the New York State

Criminal Procedure Law, acting under the direction and supervision of the aforementioned municipal corporation, City of New York.

11. That at all times hereinafter mentioned, the individually named defendants P.O. CORNELIUS O'KEEFE, P.O. ERIK MONACO, P.O. MATTHEW MONKOWSKI, P.O. JOSEPH REDMOND, SGT. AJAY KAPUR, and P.O.s JOHN and JANE DOE #1-10 were duly sworn police officers of said department and were acting under the supervision of said department and according to their official duties.

12. That at all times hereinafter mentioned the defendants, either personally or through their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City of New York.

13. Each and all of the acts of the defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant THE CITY OF NEW YORK.

14. Each and all of the acts of the defendants alleged herein were done by said defendants while acting in furtherance of their employment by defendant THE CITY OF NEW YORK.

### **FACTS**

15. On April 9, 2003, at approximately 10:45 p.m., plaintiffs MARIA CUMMINGS, D [REDACTED] C [REDACTED], and C [REDACTED] D [REDACTED] were lawfully present in the premises known as 3101 Foster Avenue, in the County of Kings, in the City and State of New York.

16. At the aforesaid time and place, plaintiffs were suddenly accosted by several members of the New York City Police Department.

17. Defendants threw plaintiff MARIA CUMMINGS to the ground.

18. As a result of this unprovoked assault, plaintiff MARIA CUMMINGS sustained, *inter alia*, injuries to her right hand and forearm.

19. Defendants beat plaintiff D [REDACTED] in the head and torso with fists, nightsticks, flashlights and radios.

20. As a result of this unprovoked assault, plaintiff D [REDACTED] sustained, *inter alia*, injuries to his ribs and right eye.

21. Defendants repeatedly smashed plaintiff C [REDACTED] head into a window.

22. As a result of this unprovoked assault, plaintiff C [REDACTED] sustained, *inter alia*, injuries to his head.

23. Defendants then handcuffed plaintiffs MARIA CUMMINGS, [REDACTED], and [REDACTED] and placed them under arrest, despite defendants' knowledge that they lacked probable cause to do so.

24. Plaintiffs were transported to the 67<sup>th</sup> Precinct of the New York City Police Department, in Brooklyn, New York.

25. Plaintiff [REDACTED] was released directly from the precinct after approximately three hours without having been charged.

26. Plaintiffs MARIA CUMMINGS and [REDACTED] were held at the 67<sup>th</sup> Precinct until the following evening and were transported Brooklyn Central Booking.

27. Plaintiffs MARIA CUMMINGS and [REDACTED] were arraigned early in the morning on April 11, 2003.

28. Plaintiff MARIA CUMMINGS was released on her own recognizance.

29. Plaintiff [REDACTED] was remanded to Rikers Island and was not released on bail until the morning of April 13, 2003.

30. Defendants initiated criminal proceedings against plaintiffs MARIA CUMMINGS and [REDACTED], despite defendants' knowledge that they lacked probable cause to do so.

31. During the period between April 11, 2003 and August 1, 2003, plaintiff [REDACTED] was required to make several court appearances to defend himself in the criminal proceedings that defendants had initiated against him.

32. On or about August 1, 2003, all charges against plaintiff [REDACTED] were dismissed.

33. During the period between April 11, 2003 and September 11, 2003, plaintiff MARIA CUMMINGS was required to make several court appearances to defend herself in the criminal proceedings that defendants had initiated against her.

34. On or about September 11, 2003, the charges brought against plaintiff MARIA CUMMINGS, were terminated in her favor.

35. As a result of the foregoing, plaintiffs sustained, *inter alia*, physical injuries, emotional distress, embarrassment, and humiliation, and deprivation of their constitutional rights.

**FIRST CLAIM FOR RELIEF**  
**DEPRIVATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. § 1983**

36. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "35" with the same force and effect as if fully set forth herein.

37. All of the aforementioned acts of defendants, their agents, servants and employees, were carried out under the color of state law.

38. All of the aforementioned acts deprived plaintiffs MARIA CUMMINGS,

[REDACTED], and [REDACTED] of the rights, privileges and immunities guaranteed to citizens of the United States by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. § 1983.

39. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, with all of the actual and/or apparent authority attendant thereto.

40. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and the rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

41. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

**SECOND CLAIM FOR RELIEF**  
**FALSE ARREST UNDER 42 U.S.C. § 1983**

42. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "41" with the same force and effect as if fully set forth herein.

43. As a result of the aforesaid conduct by defendants, plaintiffs MARIA CUMMINGS, [REDACTED], and [REDACTED] were subjected to an illegal, improper and false arrest by the defendants and taken into custody and caused to be falsely imprisoned, detained, confined, and incarcerated, without any probable cause, privilege or consent.

44. As a result of the foregoing, plaintiffs' liberty was restricted for an extended

period of time, they were put in fear for their safety, and they were humiliated and subjected to handcuffing and other physical restraints, without probable cause.

**THIRD CLAIM FOR RELIEF**  
**MALICIOUS PROSECUTION UNDER 42 U.S.C. § 1983**

45. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1” through “44” with the same force and effect as if fully set forth herein.

46. Defendants misrepresented and falsified evidence before the District Attorney.

47. Defendants did not make a complete and full statement of facts to the District Attorney.

48. Defendants withheld exculpatory evidence from the District Attorney.

49. Defendants were directly and actively involved in the initiation of criminal proceedings against plaintiffs MARIA CUMMINGS and [REDACTED].

50. Defendants lacked probable cause to initiate criminal proceedings against plaintiffs.

51. Defendants acted with malice in initiating criminal proceedings against plaintiffs.

52. Defendants were directly and actively involved in the continuation of criminal proceedings against plaintiffs.

53. Defendants lacked probable cause to continue criminal proceedings against plaintiffs.

54. Defendants acted with malice in continuing criminal proceedings against plaintiffs.

55. Defendants misrepresented and falsified evidence throughout all phases of the criminal proceedings.

56. Notwithstanding the perjurious and fraudulent conduct of defendants, the criminal

proceedings were terminated in plaintiff [REDACTED]' favor when all charges against him were dismissed on or about August 1, 2003.

57. Notwithstanding the perjurious and fraudulent conduct of defendants, the criminal proceedings were terminated in plaintiff MARIA CUMMINGS' favor on or about September 11, 2003.

**FOURTH CLAIM FOR RELIEF**  
**MALICIOUS ABUSE OF PROCESS UNDER 42 U.S.C. § 1983**

58. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "57" with the same force and effect as if fully set forth herein.

59. Defendants issued legal process to place plaintiffs MARIA CUMMINGS, [REDACTED] and [REDACTED] under arrest.

60. Defendants arrested plaintiffs in order to obtain a collateral objective outside the legitimate ends of the legal process.

61. Defendants acted with intent to do harm to plaintiffs without excuse or justification.

62. As a result of the foregoing, plaintiffs' liberty was restricted for an extended period of time, they were put in fear for their safety, and they were humiliated and subjected to handcuffing and other physical restraints, without probable cause.

**FIFTH CLAIM FOR RELIEF**  
**EXCESSIVE FORCE UNDER 42 U.S.C. § 1983**

63. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "62" with the same force and effect as if fully set forth herein.

64. The level of force employed by defendants was objectively unreasonable and in violation of plaintiffs' constitutional rights.

65. As a result of the aforementioned conduct of defendants, plaintiffs MARIA



CUMMINGS, [REDACTED], and [REDACTED] were subjected to excessive force and sustained physical injuries.

**SIXTH CLAIM FOR RELIEF**  
**MUNICIPAL LIABILITY**

66. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1” through “65” with the same force and effect as if fully set forth herein.

67. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

68. The aforementioned customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department included, but were not limited to, covering up the use of excessive force by arresting the victims.

69. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department constituted deliberate indifference to the safety, well-being and constitutional rights of plaintiffs MARIA CUMMINGS, [REDACTED]  
[REDACTED] and [REDACTED]

70. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by plaintiffs as alleged herein.

71. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the moving force behind the constitutional violations suffered by plaintiffs as alleged herein.

72. As a result of the foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department, plaintiffs were

unlawfully assaulted, arrested and incarcerated.

73. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating plaintiffs' constitutional rights.

74. All of the foregoing acts by defendants deprived plaintiffs MARIA CUMMINGS, [REDACTED], and [REDACTED] of federally protected rights, including, but not limited to, the right:

- A. Not to be deprived of liberty without due process of law;
- B. To be free from seizure and arrest not based upon probable cause;
- C. To be free from unwarranted and malicious criminal prosecution;
- D. To be free from malicious abuse of process;
- E. Not to have excessive force imposed upon them;
- F. Not to have cruel and unusual punishment imposed upon them; and
- G. To receive equal protection under the law.

74. As a result of the foregoing, plaintiffs are entitled to compensatory damages in the sum of three million dollars (\$3,000,000.00) and are further entitled to punitive damages against the individual defendants in the sum of three million dollars (\$3,000,000.00).

#### **PENDANT STATE CLAIMS**

75. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "74" with the same force and effect as if fully set forth herein.

76. On or about July 8, 2003, and within ninety (90) days after the claims herein accrued, plaintiffs MARIA CUMMINGS and [REDACTED] duly served upon, presented to and filed with the City of New York, Notices of Claim setting forth all facts and information required under the General Municipal Law § 50-e.

77. The City of New York has wholly neglected or refused to make an adjustment or payment thereof and more than thirty (30) days have elapsed since the presentation of such claims as aforesaid.

78. The City of New York has demanded hearings pursuant to General Municipal Law § 50-h.

79. Said hearing was conducted for plaintiff MARIA CUMMINGS on February 5, 2004.

80. To date, the City of New York has not conducted a hearing pursuant to General municipal Law § 50-h for plaintiff [REDACTED].

81. This action was commenced within one (1) year and ninety (90) days after the cause of action herein accrued.

82. Plaintiffs have complied with all conditions precedent to maintaining the instant action.

83. This action falls within one or more of the exceptions as outlined in C.P.L.R. § 1602.

**FIRST CLAIM FOR RELIEF UNDER N.Y. STATE LAW**  
**FALSE ARREST**

84. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1” through “83” with the same force and effect as if fully set forth herein.

85. Defendant police officers arrested plaintiffs in the absence of probable cause and without a warrant, privilege or consent.

86. As a result of the aforesaid conduct by defendants, plaintiffs were subjected to an illegal, improper and false arrest by the defendants and taken into custody and caused to be falsely imprisoned, detained, confined, incarcerated and prosecuted by the defendants in criminal proceedings.

87. As a result of the aforementioned conduct, plaintiffs have suffered physical and mental injury, together with embarrassment, humiliation, shock, fright and loss of freedom.

**SECOND CLAIM FOR RELIEF UNDER N.Y. STATE LAW**  
**FALSE IMPRISONMENT**

88. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1” through “87” with the same force and effect as if fully set forth herein.

89. As a result of the foregoing, plaintiffs were falsely imprisoned, their liberty was restricted for an extended period of time, they were put in fear for their safety, and they were humiliated and subjected to handcuffing and other physical restraints.

90. Plaintiffs were conscious of said confinement and did not consent to same.

91. The confinement of plaintiffs was without probable cause and was not otherwise privileged.

92. As a result of the aforementioned conduct, plaintiffs have suffered physical and mental injury, together with embarrassment, humiliation, shock, fright and loss of freedom.

**THIRD CLAIM FOR RELIEF UNDER N.Y. STATE LAW**  
**ASSAULT**

93. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1” through “92” with the same force and effect as if fully set forth herein.

94. Defendants' aforementioned actions placed plaintiffs in apprehension of imminent harmful and offensive bodily contact.

95. As a result of defendants' conduct, plaintiffs have suffered physical pain and mental anguish, together with shock, fright, apprehension, embarrassment, and humiliation.

**FOURTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW  
BATTERY**

96. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "95" with the same force and effect as if fully set forth herein.

97. Defendant police officers touched plaintiffs in a harmful and offensive manner.

98. Defendant police officers did so without privilege or consent from plaintiffs.

99. As a result of defendants' conduct, plaintiffs have suffered physical pain and mental anguish, together with shock, fright, apprehension, embarrassment and humiliation.

**FIFTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW  
MALICIOUS PROSECUTION**

100. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "99" with the same force and effect as if fully set forth herein.

101. On or about April 11, 2003, the defendant City of New York, its agents, servants and employees, and the aforesaid defendant police officers commenced a criminal proceeding against plaintiffs, and falsely and maliciously, and without probable cause, charged plaintiffs with crimes.

102. Defendants were directly and actively involved in the initiation of criminal proceedings against plaintiffs.

103. Defendants lacked probable cause to initiate criminal proceedings against plaintiffs.

104. Defendants were motivated by actual malice in initiating criminal proceedings against plaintiffs.

105. Defendants misrepresented and falsified evidence before the District Attorney.

106. Defendants did not make a complete and full statement of facts to the District Attorney.

107. Defendants withheld exculpatory evidence from the District Attorney.

108. Defendants were directly and actively involved in the continuation of criminal proceedings against plaintiffs.

109. Defendants lacked probable cause to continue criminal proceedings against plaintiffs.

110. Defendants were motivated by actual malice in continuing criminal proceedings against plaintiffs.

111. Notwithstanding the perjurious and fraudulent conduct of defendants, the criminal proceedings were terminated in plaintiff [REDACTED]' favor when all charges against him were dismissed on or about August 1, 2003.

112. Notwithstanding the perjurious and fraudulent conduct of defendants, the criminal proceedings were terminated in plaintiff MARIA CUMMINGS' favor on or about September 11, 2003.

**SIXTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW  
MALICIOUS ABUSE OF PROCESS**

113. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1” through “112” with the same force and effect as if fully set forth herein.

114. Defendant police officers issued legal process to place plaintiffs under arrest.

115. Defendant police officers arrested plaintiffs to obtain a collateral objective outside the legitimate ends of the legal process.

116. Defendant police officers acted with intent to do harm to plaintiffs, without excuse or justification.

117. As a result of the aforementioned conduct, plaintiffs suffered physical and mental injury, together with embarrassment, humiliation, shock, fright, and loss of freedom.

**SEVENTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW  
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

118. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1” through “117” with the same force and effect as if fully set forth herein.

119. The aforementioned conduct was extreme and outrageous, and exceeded all reasonable bounds of decency.

120. The aforementioned conduct was committed by defendants while acting within the scope of their employment by defendant THE CITY OF NEW YORK.

121. The aforementioned conduct was committed by defendants while acting in furtherance of their employment by defendant THE CITY OF NEW YORK.

122. The aforementioned conduct was intentional and done for the sole purpose of causing severe emotional distress to plaintiffs.

123. As a result of the aforementioned conduct, plaintiffs suffered severe emotional distress, physical and mental injury, together with embarrassment, humiliation, shock, fright and loss of freedom.

**EIGHTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW**  
**NEGLIGENT HIRING AND RETENTION**

124. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1” through “123” with the same force and effect as if fully set forth herein.

125. Upon information and belief, defendant City of New York failed to use reasonable care in the hiring and retention of the aforesaid defendants who authorized, conducted and participated in the arrest of plaintiffs.

126. Defendant City of New York knew, or should have known in the exercise of reasonable care, the propensities of the defendants P.O. CORNELIUS O’KEEFE, P.O. ERIK MONACO, P.O. MATTHEW MONKOWSKI, P.O. JOSEPH REDMOND, SGT. AJAY KAPUR, and P.O.s JOHN and JANE DOE #1-10 to engage in the wrongful conduct heretofore alleged in this Complaint.

127. As a result of the aforementioned conduct, plaintiffs suffered severe emotional distress, physical and mental injury, together with embarrassment, humiliation, shock, fright and loss of freedom.



**NINTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW**  
**NEGLIGENT TRAINING AND SUPERVISION**

128. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered “1” through “127” with the same force and effect as if fully set forth herein.

129. Upon information and belief the defendant City of New York failed to use reasonable care in the training and supervision of the aforesaid defendants who authorized, conducted and participated in the arrest of plaintiffs.

130. As a result of the foregoing, plaintiffs MARIA CUMMINGS and [REDACTED] [REDACTED] S are entitled to compensatory damages in the sum of two million dollars (\$2,000,000.00) and are further entitled to punitive damages against the individual defendants in the sum of two million dollars (\$2,000,000.00).

**WHEREFORE**, plaintiffs MARIA CUMMINGS, individually and as mother and natural guardian of [REDACTED], and MARVA CHAPMAN, as mother and natural guardian of [REDACTED], demand judgment in the sum of three million dollars (\$3,000,000.00) in compensatory damages and three million dollars (\$3,000,000.00) in punitive damages, plus reasonable attorney’s fees, costs, and disbursements of this action.

Dated: New York, New York  
November 9, 2004

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/s/  
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